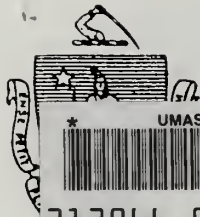


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THE COMMONWEALTH OF MASSACHUSETTS

OFFICE OF THE INSPECTOR GENERAL

ONE ASHBURTON PLACE • BOSTON 02108

JOSEPH R. BARRESI  
INSPECTOR GENERAL

TELEPHONE  
(617) 727-9140

March 26, 1991

Representative Thomas M. Finneran, Chairman  
House Committee on Ways and Means  
State House; Room 243  
Boston, Massachusetts 02133

GOVERNMENT DOCUMENT  
COLLECTION

SEP 24 1991

Re: House No. 5325

University of Massachusetts  
Depository Copy

Dear Representative Finneran:

I have reviewed House No. 5325. I am writing in opposition to several provisions of this proposed transportation bond bill which would, if enacted, increase the likelihood of waste and abuse of public funds. The bill, in its present form, contains the following deficiencies:

1. Grants all State agencies vaguely defined authority to dispense with unidentified legal requirements.

Section 16 directs all State agencies, authorities and instrumentalities of the Commonwealth to do anything "necessary and desirable" to assist the Third Harbor Tunnel project "notwithstanding any general or special law to the contrary." The legal effect of this section is unclear; its imprudence is clear. Language which could be interpreted to waive any and all laws in connection with the expenditure of hundreds of millions of dollars of public funds based upon a finding by some departmental officials that sidestepping the law is "desirable" obviously constitutes an invitation to waste and abuse. If certain provisions of law are to be waived for the sake of this project, those provisions should be specified. Otherwise, I recommend that the Committee strike Section 16 in its entirety.

2. Permits the Department of Public Works to circumvent statutory safeguards.

Section 1, as presently drafted, shows some improvement over the earlier versions as a result of modifications

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incorporated by the Joint Committee on Transportation. However, the language is still unacceptably vague, permitting the Department to sidestep the Ward Commission requirements for a contractor prequalification on all public building projects. This requirement was characterized by the Supreme Judicial Court as a "cornerstone" of the Ward Commission reforms. There is no justification for abandoning that requirement on these buildings. Furthermore, the Department would, under language in Section 1, be "authorized . . . to exercise all powers and do all things necessary and convenient to carry out the purposes of this act." The significance of this authorization is at best confusing and at worst open-ended. The Department draws its powers from other well-defined laws. There is no need -- and no prudent justification -- for tacking this language onto this bond authorization bill. I recommend that the Committee strike lines 72 to 78, inclusive, and insert language I have provided in an attachment to this letter.

3. Permits the Department to take land by eminent domain on behalf of other agencies, authorities and public entities.

Section 7, as drafted, would permit the Department to take land by eminent domain on behalf of any other department or agency, including State authorities. I do not object to the limited use of this power in certain specific contexts; however, the unprecedented size of the Central Artery/Tunnel Project warrants more precise drafting to ensure that the Department's power to take land on behalf of another agency is not used in a manner unintended by the Legislature.

I recommend that the Committee strike lines 1 to 6, inclusive, and insert language I have provided in an attachment to this letter.

4. Permits "private" sale of certain property.

Section 1 permits the Department to sell, at public "or private sale," any structure the title to which has been acquired for highway purposes. State law already provides rules for the prudent -- and public -- disposition of property acquired at public expense. I know of no good reason, nor has a compelling rationale been provided by the Department, for permitting the private sale of certain "structures." I recommend that the Committee strike in line 32 of Section 1 the authorization for "private" sales.



5. Imprudently alters statutory provisions related to management of the State Transportation Building.

Sections 58 through 61 amend certain provisions of Chapter 240 of the Acts of 1984 pertaining to the management of the State Transportation Building. Section 58 states that the operating agreement for the Building garage shall be "coterminous" with the building lease. At present, extensions to that agreement can only be granted in five-year increments. I know of no good reason why this provision should be changed. Absent a reasonable explanation, I recommend that the Committee strike Section 58 in its entirety.

Sections 59 through 61 would continue or expand a management arrangement which has proved unduly costly to State taxpayers. These amendments would continue the current scheme of awarding to a State authority a no-bid contract to manage the State Transportation Building. Each year since 1983, an outside section of the budget has directed that a management contract for the State Transportation Building be awarded to one of the public tenants of the building. The effect of this provision, coupled with the language that would be amended by Sections 59 through 61, has been to mandate a no-bid contract with the Massachusetts Port Authority. The fiscal year 1991 contract now has a value of \$7.6 million, of which \$302,870 is Massport's management fee. Review by the Office of the State Auditor has concluded that the arrangement is excessively costly and should be subjected to the light of open competition.

Sections 59 through 61 would merely expand no-bid contracting authorization to other authorities -- for example, the MBTA or the Turnpike Authority. The new language is no more sane than the old. I recommend that the Committee strike Sections 59 to 61 inclusive. If Massport or any other authority is so concerned with managing the building, then the Legislature should direct the authority to do so at no cost to the State. Otherwise, the Committee should require that the contract for managing the State Transportation Building be competitively procured. Language to accomplish this objective is attached to this letter.

6. Adds a non-voting member to the Steamship Authority Board.

Section 74 of this bill would increase the Steamship Authority's Board membership to four by adding a non-voting member from the Town of Barnstable. I have consistently supported increasing the Authority's Board



# THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change. It begins with the first settlers, who came to the Americas in search of a new life. They found a land of opportunity, but also a land of challenge. The early years were marked by conflict and struggle, as the settlers fought to establish their own communities and defend their rights. Over time, the United States grew from a small colony into a powerful nation, with a rich and diverse culture. The story of the United States is a story of the human spirit, of the pursuit of freedom and the dream of a better life.

The United States has a long and proud history, one that is filled with great achievements and challenges. From the first settlers to the present day, the United States has been a land of opportunity and innovation. It has been a land where people have come from all over the world to seek a better life, and where they have found it. The United States has been a land of freedom and democracy, where people have the right to speak their minds and to participate in the government. It has been a land of progress and achievement, where people have made great discoveries and created great works of art and science. The United States has been a land of hope and dreams, where people have believed in a better future and have worked hard to make it a reality.

The United States is a land of many firsts. It was the first country to be founded on the principles of freedom and democracy. It was the first country to have a written constitution. It was the first country to have a federal government. It was the first country to have a president. It was the first country to have a Supreme Court. It was the first country to have a Bill of Rights. The United States has been a land of many firsts, and it continues to be a land of firsts today. It is a land of innovation and progress, where people are always looking for new ways to improve the world.

The United States is a land of great diversity. It is a land where people of many different backgrounds and cultures live together in harmony. It is a land where people of all ages and abilities can find a place to call home. The United States is a land of opportunity for everyone, and it is a land where everyone has the chance to make a difference. The United States is a land of hope and dreams, and it is a land where the future is bright.

Representative Thomas M. Finneran, Chairman  
House Committee on Ways and Means  
March 26, 1991  
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membership to either five or seven to ensure more equitable representation and to improve its performance as a policy-making body. I do not, however, support the addition of a non-voting member. Creating a second-class seat on the Board will achieve neither of these goals. I recommend that the Committee strike Section 74 in its entirety.

7. Grants preferential status to certain materials and products.

Section 80 of this bill directs all departments, authorities and instrumentalities of the Commonwealth, in awarding contracts and selecting materials, to consider certain engineering and cost characteristics. I do not object to this language. However, paragraph (6) of Section 80 directs that "a preference is to be given to those materials and products supplied by or produced by companies which employ and retain and are likely to continue to employ and retain significant numbers of residents of the Commonwealth."

These provisions, in particular, could introduce the potential for increased litigation in the award of construction contracts. In the absence of clear standards, vendors may be expected to challenge and delay awards, claiming that they deserve preference (or that a competitor does not) on the basis of this mandatory, but standardless, policy. I recommend that the Committee strike paragraph (6).

Please do not hesitate to contact me or Wendy Haynes, of this Office, if we may be of further assistance.

Sincerely,



Joseph R. Barresi  
Inspector General

cc: Governor Weld  
Lieutenant-Governor Cellucci  
Secretary Taylor

Attachments





Section 1:

Insert this paragraph immediately following line 71:

Notwithstanding the provisions of sections thirty-eight C, forty A and forty B of chapter seven of the General Laws, the department shall have jurisdiction over the selection of designers performing design services in connection with the six ventilation buildings to be constructed as part of the Central Artery/Tunnel Project, and shall control and supervise the construction of said ventilation buildings. Notwithstanding the provisions of section forty-four A of chapter one hundred forty-nine of the General Laws, contracts for the construction of said ventilation buildings shall be awarded pursuant to the provisions of section thirty-nine M of chapter thirty of the General Laws; provided, however, that the provisions of section forty-four D of chapter one hundred forty-nine of the General Laws shall apply to such contracts.



House No. 5325

Section 7:

Replace Lines 1 to 6, inclusive with the following:

When the department has been authorized by the general court to construct a project on behalf of any other department, authority, agency, board, commission or other public entity, or when the department determines that it must relocate any utility or utility facility or public facility in connection with any project, land or rights in land may be acquired by the department by eminent domain under chapter seventy-nine of the General Laws, by purchase or otherwise on behalf of said other department, authority, agency, board, commission, public entity, or public utility; provided, however,



# HOUSE . . . . . No. 159

Accompanying the fourth recommendation of the Office of the Inspector General (House, No. 155). State Administration.

## *The Commonwealth of Massachusetts*

In the Year One Thousand Nine Hundred and Ninety-One.

### AN ACT TO IMPROVE THE MANAGEMENT OF STATE OFFICE BUILDINGS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 40F of chapter 7 of the General Laws,  
2 as appearing in the 1988 Official Edition, is hereby amended by  
3 deleting the fifth paragraph and inserting in place thereof the  
4 following paragraph: —

5 The deputy commissioner shall assist in the preparation and  
6 shall approve of plans for the organization of all space within and  
7 around buildings and appurtenant structures used by state  
8 agencies, and shall assign the use of space within and around the  
9 state house, in accordance with the provisions of sections ten,  
10 sixteen A and seventeen of chapter eight; the John W.  
11 McCormack State Office Building; the Leverett Saltonstall State  
12 Office Building; the Springfield Office Building; the Pittsfield  
13 Office Building; the Erich Lindemann Building; the Charles F.  
14 Hurley Building; the state transportation building; any real  
15 property acquired for the use of state agencies, the greater part  
16 of which is not needed by any one state agency; and any other  
17 real property assigned by law to the division of capital planning  
18 and operations.

1 SECTION 2. Section 6 of chapter 8 of the General Laws, as  
2 appearing in the 1988 Official Edition, is hereby amended by  
3 deleting the entire section and inserting in place thereof the  
4 following section: —

5 The superintendent shall have charge of the care and operation  
6 of the state house; the John W. McCormack State Office Building;





7 the Everett Saltonstall State Office Building; the Springfield  
 8 Office Building; the Pittsfield Office Building; the Erich  
 9 Indemann Building; the Charles F. Hurley Building; the building  
 10 at 100 Nashua Street in the city of Boston; the state transportation  
 11 building; all parking areas and grounds appurtenant to said  
 12 buildings; and any other state properties as are designated by law.  
 13 The superintendent shall see that all such properties are kept clean  
 14 and in good order; shall take proper precautions against damage  
 15 to such properties; and shall direct the making of all repairs and  
 16 improvements therein. All executive and administrative  
 17 departments and officers shall make requisition upon the  
 18 superintendent for any such repairs or improvements.

19 The state house and all facilities located therein, including  
 20 hearing rooms, shall be accessible to, functional for and safe for  
 21 use by physically handicapped persons; provided further that the  
 22 state shall make available a certain number of designated  
 23 handicapped parking spaces for the general public; provided,  
 24 however, that no construction required for said accessibility,  
 25 functionality and safety shall commence until the superintendent  
 26 of state buildings has completed the study required in section two  
 27 of chapter 682 of the Acts of 1987.

28 The superintendent may, with the approval of the deputy  
 29 commissioner of capital planning and operations, award contracts  
 30 for the provision of building management services at one or more  
 31 of the properties under his care. Said building management  
 32 services may include operation of mechanical and electrical  
 33 systems, cleaning and housekeeping, preventive maintenance,  
 34 security, minor repairs, and similar services, but shall not include  
 35 services for which contracts are subject to the provisions of section  
 36 thirty-nine M of chapter thirty or section forty-four A of chapter  
 37 one hundred and forty-nine. Every contract for building  
 38 management services estimated to exceed five thousand dollars  
 39 shall be awarded through the use of competitive sealed proposals  
 40 in accordance with written selection procedures. Requests for such  
 41 proposals shall be publicly advertised in a newspaper of general  
 42 circulation in the vicinity of the property; in any periodical  
 43 established by the secretary of state for the purpose of advertising  
 44 such contracts; and in other trade publications and periodicals as  
 45 determined by the superintendent. Each such advertisement shall

46 appear at least two weeks prior to the date established for the  
 47 opening of proposals. The superintendent may evaluate proposals  
 48 on the basis of criteria in addition to cost; provided that all such  
 49 criteria are set forth in the request for proposals, and provided  
 50 further that if the superintendent awards the contract to an offeror  
 51 who did not submit the lowest price, he shall explain the reasons  
 52 for the award in writing, specifying in reasonable detail the basis  
 53 for determining that the quality of services under the contracts  
 54 will not exceed the commonwealth's actual needs and that the  
 55 quality services offered in each lower priced proposal would not  
 56 meet the commonwealth's actual need. Each contract shall contain  
 57 performance criteria. The superintendent shall, at least annually,  
 58 prepare a written evaluation of each contractor's performance.  
 59 Each contract shall be for a term of not more than five years,  
 60 subject to appropriation, provided that the superintendent shall  
 61 not solicit or award a contract for a term exceeding one year unless  
 62 he has determined in writing that a contract term exceeding one  
 63 year will result in significant cost savings to the commonwealth.  
 64 All building projects at properties under the care of the  
 65 superintendent, the estimated cost of which exceed twenty-five  
 66 thousand dollars and which involve structural or mechanical  
 67 work, shall remain under the control and supervision of the  
 68 division of capital planning and operations, in accordance with  
 69 section forty B of chapter seven. The superintendent shall be  
 70 deemed the using agency for the purposes of said projects.

71 The superintendent shall annually, on or before September first,  
 72 submit to the joint committee on state administration a  
 73 comprehensive report on the management and condition of all  
 74 such properties. A copy of the report shall be provided to the  
 75 inspector general.

1 SECTION 3. Section 9 of chapter 8 of the General Laws, as  
 2 appearing in the 1988 Official Edition, is hereby amended by  
 3 deleting the section in its entirety.

1 SECTION 4. Section 1 of chapter 240 of the acts of 1984 is  
 2 hereby amended by deleting paragraph (n) in its entirety.

1 SECTION 5. This act shall take effect on July 1, 1991.

